

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1596 of 1991

For Approval and Signature:

Hon'ble MR.JUSTICE R.R.TRIPATHI

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1. Whether Reporters of Local Papers may be allowed : YES
to see the judgements?
2. To be referred to the Reporter or not? : YES
3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge? : NO

MADHUBHA BALDEVSINH JETHWA

Versus

STATE OF GUJARAT

Appearance:

MR RK MISHRA for Petitioner
Ms.Nandini Joshi, ASSTT GOVERNMENT PLEADER
instructed by Mr.S.P. Hasurkar for Respondent No. 1
RULE SERVED for Respondent No. 2, 3

CORAM : MR.JUSTICE R.R.TRIPATHI

Date of decision: 18/08/2000

ORAL JUDGEMENT :

This petition is filed by a dismissed SRP Constable challenging the order of dismissal dated 22.5.1990 passed by the Commandant, State Reserve Police, Group 7, at Nadiad. The facts giving rise to the present petition are that the petitioner who was serving as an SRP Constable has proceeded on leave and after he returned from leave, he was required to collect his kit.

While he was asked to collect the kit by one Shri B.T. Kamte, the Head Constable, the petitioner asked for an assistant to which the said Head Constable said to have replied that he is to attend duty at Gate Nos.1 and 4. On this reply, the petitioner got excited and assaulted the Head Constable, B.T. Kamte. Pursuant to the said incident, a charge sheet was filed against the petitioner. The petitioner gave his reply. Thereafter, a departmental inquiry was held on conclusion of which, punishment of dismissal was imposed. The petitioner filed an appeal against the order of dismissal dated 22.5.1990. The said appeal was dismissed by an order dated 25.1.1991. In the present petition the order of dismissal is challenged on the grounds which are set out in the petition as grounds I to VII.

2. The main thrust of challenge is that a copy of the inquiry officer's report ought to have been supplied to the petitioner so as to see that the petitioner is able to defend himself properly by submitting against the said report relying upon which the disciplinary authority inflicted punishment of dismissal. Shri Mishra, learned advocate submitted that as held by the Honourable the Supreme Court in the matter of Union of India v. Mohd. Ramzan Khan, AIR 1991 SC 471, the inquiry officer's report is to be supplied to the concerned delinquent to enable him to defend against the same. It is also submitted that the petitioner was handicapped in absence of the copy of the inquiry officer's report, as in absence of that the petitioner did not know as to what had weighed with the disciplinary authority in passing of the order of dismissal. The learned advocate placed reliance upon the decision of the Apex Court in the matter of State of Maharashtra v. B.A. Joshi, reported in AIR 1969 SC 300. The learned advocate submitted that the order of dismissal is illegal, arbitrary, against Article 311(2) of the Constitution. It is also against the principle laid down by the Honourable the Supreme Court in the case of Union of India v. R.C. Goel, reported in AIR 1964 SC 368. Mr. Mishra next submitted that the second show cause notice was issued by the authority which was subordinate to the appointing authority and therefore, the order is vitiated on that count also. The order is violative of Articles 14 and 16 of the Constitution.

3. Ms. Nandini Joshi, learned AGP appearing with Mr. Hasurkar, pointed out that so far as the decision in the case of Ramzan Khan (supra) is concerned the same is made applicable only prospectively as laid down by the Honourable the Supreme Court in the matter of Managing

Director, ECIL v. Karunakar, reported in (1993) 4 SCC 727. The Honourable the Supreme Court has laid down in categorical terms that the decision of the Apex Court in case Mohd. Ramzan Khan (*supra*) will be applicable prospectively, that is to say the order of punishment passed after 20.11.1990. Not only that it is further made clear that the law laid down by the aforesaid case will not be applicable to the orders of punishment passed before that date notwithstanding that the proceedings arising out of the same were pending in the courts after that date. In view of that the plea of the petitioner that on account of non supply of the copies of the inquiry officer's report the order of dismissal is vitiated, does not survive. It is also submitted that under the rules, there was no obligation on the part of the authority to supply the inquiry officer's report. Therefore, independent of the law laid down by the Honourable Supreme Court in the matter of Ramzan Khan, under the rules, the petitioner had no right to ask for a copy of the inquiry officer's report. On that ground, the order of dismissal does not stand vitiated.

4. Learned AGP next submitted that the petitioner was serving as a constable in SRP, which is a uniformed force and is expected of having high standards of discipline. Learned AGP invited attention of the Court to the show cause notice which is produced at Annexure 'B' in which it is specifically mentioned that the present petitioner was earlier in Group 13 of SRP and on account of similar conduct, the petitioner was transferred to the present Group 7. This shows the history/ background of the petitioner. In this background, if the authorities have decided to impose penalty of dismissal, the same cannot be said to be unjust, arbitrary, illegal in any manner whatsoever, so as to warrant that this Court shall exercise the extraordinary jurisdiction under Article 226 of the Constitution to interfere with the quantum of punishment in the present case. As the facts are narrated, they seem to be quite probable inasmuch as the person who was assaulted by the petitioner had immediately reported to his higher officers. Not only that he has filed a Police complaint. As against that the petitioner was not available on the scene of offence after the alleged incident, which speaks itself for the conduct of the petitioner. The fact that earlier the petitioner was required to be transferred from Group 13 to Group 7, on account of similar conduct this Court does not find it to be a fit case for interference with even on the point of quantum of punishment also. The submission about non filing of the reply to the present Special Civil

Application is of no substance inasmuch as all the papers are on record and on perusal of those papers no reply is necessary from the authorities. Therefore, that submission of Mr. Mishra that the authorities have not filed any reply to the present petition is devoid of any merits. The matter is in the nature of a petition under Article 227 of the Constitution. The perusal of the orders passed by the authorities reveal that all the facts are narrated in detail. Not only that cogent reasons are given for imposing the penalty of dismissal.

5. The argument regarding issuing show cause notice signed by a subordinate officer, too has no substance inasmuch as the show cause notice is shown to have been signed by the In-charge commandant. In-charge Commandant is 'Commandant' for all practical purposes and merely because he was In-charge Commandant at the time of issuance of the show cause notice, the show cause notice does not get vitiated. Besides, the dismissal order is passed by the competent officer, who is the appointing authority for the personnel of the rank of the petitioner. In that view of the matter this submission also does not call for any interference at the hands of this Court.

6. In the result the petition fails. Rule is discharged. No order as to cost.

18.8.2000 (Ravi R. Tripathi, J.)
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